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# QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

## Situation of human rights in parts of South-Eastern Europe

## Report of the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, Jose Cutileiro

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**Executive summary**

The present report is submitted by Jose Cutileiro, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The report covers developments in the area of the Special Representative's mandate up until the second week of December 2001 and is based on information gathered by Mr. Cutileiro in the course of his visit to the countries concerned and by the field offices of the Office of the High Commissioner for Human Rights (OHCHR).

## I. BOSNIA AND HERZEGOVINA

The Special Representative emphasizes that those indicted by the International Criminal Tribunal for the Former Yugoslavia must be brought to stand trial. Moreover, the authorities in Bosnia and Herzegovina must ensure that persons responsible for serious violations of human rights during the conflict do not continue to exercise social, political, or economic control.

The Special Representative notes the recent imposition of amendments to the property laws and hopes these amendments will rectify the uneven implementation of property restitution which has been seen to date, and the implicit problems this has caused. At the same time, return cannot be envisaged without the full protection of human rights, especially for vulnerable groups. The international community, with the close participation of government partners, must pursue a rights-based approach to sustainable development.

The recent reduction in the number of persons authorized to act as police officers because of improper activities (so-called deauthorization) is a positive sign. Law enforcement agents must be held to a higher standard than the general citizenry, and it is hoped this will ameliorate the effects of a lack of a multi-ethnic, professional police force.

Other areas of human rights protection have been positive, such as the recent agreement between the Entity and Brcko District health funds to provide insurance coverage for all insured persons regardless of their location. This agreement and the manner of its negotiation, which did not necessitate any political intervention by the international community, are strongly endorsed by the Special Representative. In addition, moves to strengthen the legal framework in compliance with international standards are welcomed, including the proposed amendments to the State Law on Immigration and Asylum, the draft State law on protection of national minorities, and the adoption of the National Plan of Action to Combat Trafficking in Persons. The Special Representative encourages all institutions to ensure that these laws, once finalized, are inclusively applied throughout Bosnia and Herzegovina.

## II. FEDERAL REPUBLIC OF YUGOSLAVIA

In the Federal Republic of Yugoslavia, the Special Representative recognized an overall improvement in the situation of human rights in the past year. Positive developments included the Governments' efforts to redress a number of human rights violations committed by the former regime, including the release of many Albanian political prisoners, investigating the fate of persons missing during the Kosovo conflict in 1999 and finding solutions for all displaced persons in the Federal Republic. He noted, however, that closer practical cooperation must be

developed - particularly between the Federal Republic and the authorities of the United Nations Mission in Kosovo (UNMIK) - if these issues are to be resolved without further delay. The Special Representative also noted that a number of important steps had been taken to reform national institutions such as the police, the judiciary and prisons - all of which will have a direct influence on the rule of law and the promotion and protection of human rights in Yugoslavia in the future. At the same time, he found that the overall process of reform remains slow, piecemeal and ad hoc and that the unresolved status of the Republic of Montenegro within the Federal structure and ongoing political divisions in the Federal Republic and Serbia continue to impede cooperation and dialogue between the constituent authorities at all levels of Government. He was also concerned about a number of cases allegedly involving ill-treatment by the police - albeit not in a systemic or systematic way -and called on the relevant authorities to investigate these allegations and to improve the overall process by which police complaints are investigated, including oversight mechanisms.

In Southern Serbia, he welcomed the peaceful settlement of the conflict in May 2001 and noted the value of political dialogue in ending and preventing armed conflict. The Special Representative noted the good progress made in implementing the terms of the political settlement (the "Covic Plan") to improve the social, economic and political rights situation for ethnic Albanians in southern Serbia. He noted, however, that if momentum and confidence are to be maintained among all affected ethnic populations in the area, then more progress must be demonstrated in a number of key areas, notably in achieving the full and active participation of ethnic groups in all aspects of public and community life

In Kosovo, the Special Representative welcomed the promulgation of a legal framework for provisional self–government and the recent holding of elections for the Kosovo legislative Assembly and executive body. He noted the progress made and the obstacles still faced by the United Nations civil administration (UNMIK) and military component (KFOR) in providing a safe and secure environment in Kosovo. In particular, he identified three areas of ongoing concern: the human rights situation and physical protection of ethnic minority communities in Kosovo; the quality of the rule of law, including the independence of the judiciary; and the extent to which human rights standards are reflected and integrated into the policies and practices of UNMIK and KFOR.

## Introduction

1. The present report is submitted by Jose Cutileiro, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, in accordance with Commission resolution 2001/12. The report covers developments in the area of the Special Representative's mandate up until the second week of December 2001 and is based on information gathered by Mr. Cutileiro in the course of his visit to the countries of his mandate and by the field offices of the Office of the High Commissioner for Human Rights (OHCHR). The Special Representative would like to thank all those individuals and organizations which have supported his mandate since he assumed his position in June 2001. In particular, he would like to pay tribute to the OHCHR human rights field staff, both international and local, who have demonstrated great dedication to the protection and promotion of human rights, and who conduct their work in often difficult circumstances. The Special Representative also wishes to express his gratitude to the Governments which have provided financial support to OHCHR and enabled him to exercise his mandate effectively.

2. The Special Representative presented his first report to the United Nations General Assembly on 11 October 2001 (A/56/460). As this is his first report to the Commission on Human Rights, it is an update of and supplements the earlier report.

## I. BOSNIA AND HERZEGOVINA

3. The Special Representative travelled on mission to Bosnia and Herzegovina from 24 to 27 July 2001. During his visit in Sarajevo, he met with members of the Presidency and State ministers. Further, he met with the High Representative and other interlocutors from international organizations and civil society. He did not visit government officials of the Federation or the Republika Srpska.

### A. General observations

4. The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively, the "Peace Agreement") (A/50/790-S/1995/999) brought an end to the egregious violations of human rights and humanitarian law in Bosnia and Herzegovina, despite the fact that many of its provisions have never been fully complied with by the parties. Reporting on the situation of human rights in Bosnia and Herzegovina requires assessment in the light of the international human rights standards set by the United Nations, rather than the situation as it was at the signing of the Peace Agreement, a tall order indeed. Compounding the problems directly associated with the conflict, the economy continues to stumble along the path towards a free market system, with limited transitionary safeguards. There is a weak sense of statehood and citizenship of that State, and thus no real sense of general community. Nationalisms (i.e. Bosniak, Serb and Croat biases) and corruption continue to undermine the political and legal system. Despite recognition by many of those within the fragile coalition Government of the need to comply with international human rights obligations; implementation has been very slow owing to the aforementioned problems.

5. The Special Representative reiterates his call for full implementation of the Decision on Constituent Peoples adopted by the Constitutional Court of Bosnia and Herzegovina in September 2000. This decision affirmed that Bosniaks, Croats and Serbs are constituent peoples of the State, and not solely of one Entity or the other. To date, the Entities have undertaken few efforts to comply with this decision. In recognizing the diverse fabric of society in Bosnia and Herzegovina, however, the Special Representative is encouraged by moves to elaborate a draft State law on the protection of national minorities, which will give legislative form to the strong non-discrimination provisions in the Constitution.

## B. War crimes and reconciliation

6. Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) remains an outstanding issue. In September the Republika Srpska (RS) adopted its law on cooperation with the ICTY, which, although technically unnecessary, sends a potentially positive message. It will, however, be of little use if the RS authorities do not commence actions to support their words. The Special Representative once again reminds the State and Entities of their obligation under the Peace Agreement (annex 4, art. II (8)) to comply fully with the ICTY and its orders issued pursuant to article 29 of the Statute of the Tribunal, reiterated in Security Council resolution 1357 (2001).

7. Beyond mere cooperation with ICTY, annex 7 to the Peace Agreement places responsibility on the domestic authorities for undertaking crucial measures including "the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary and police forces and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups." In light of this provision, and given the lack of action by the State and Entities, the Special Representative welcomes the recent increase in the number of persons whose authorization to act as police officers has been withdrawn (so-called "deauthorization") by the Commissioner of the United Nations International Police Task Force. By holding these persons accountable to the higher standard demanded of law enforcement officials, it will be possible for the community at large to regain confidence in those directly entrusted with their protection.

8. It is, nonetheless, essential that the State and Entities implement an adequate legal framework to carry out their duties under annex 7. This is necessary to allay community fears of ethnic bias, to promote transparency in local government, and to improve the climate of security by ensuring that those culpable of human rights violations no longer exert political, economic, or social control.

9. Further promoting reconciliation and closure of issues directly related to the conflict, the first DNA-assisted identification of a missing person in Bosnia and Herzegovina was processed on 16 November 2001. At the time of writing, over 6,900 bodies have been exhumed under the Joint Exhumation Process conducted by the Entity commissions, and identifications are ongoing. This recovery and identification process allows the families of the missing to bring closure to the uncertainty with which they have lived for the past six years.

### C. Rule of law

10. Notwithstanding the recent police deauthorizations, the persistent lack of a multi-ethnic and professional police force and a functioning and genuinely independent judiciary necessarily undermine the rule of law. In these organs, as within the civil service, there remains a lack of professionalism predicated on ethnic and political bias as well as corruption. Given the planned exit of The United Nations Mission in Bosnia and Herzegovina (UNMIBH) at the end of 2002, the Mission should intensify its focus on institutional reform of law enforcement agencies, whilst continuing its scrutiny of individual officers. Minority representation in the police forces remains well below agreed targets, with a mere 3 per cent of officers in the Republika Srpska from minorities and 5 per cent in the Federation.

11. Nonetheless, progress in the field of law enforcement significantly outpaces progress in the field of the judiciary. The Independent Judicial Commission has only very recently begun to observe concrete results from the Comprehensive Review Process, which was originally to be completed in early 2002. This process should be extended and intensified.

12. The inability to prevent corruption undermines institutional structures and erodes sustainable development. Internal control structures are lacking.[1] Overall, the extent to which corruption features in the economy, and in society in general, remains a disturbing obstacle to the building of a country where human rights are respected and violations redressed by the agents of the State and Entities.

### D. Return

13. Issues related to the return of refugees and displaced persons retain their prominence in Bosnia and Herzegovina. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), over 680,000 people from Bosnia and Herzegovina are still displaced persons or refugees without a durable solution. Implementation of property laws continues to be unequal. In the Federation the property implementation ratio[2] is only 46 per cent, but in the Republika Srpska the ratio is an appalling 27 per cent.[3] At the same time, Bosnia and Herzegovina is witnessing an increase in the number of returnees, in part due to the uneven implementation of the property legislation and the consequent evictions which may leave persons with no option but to return to their pre-war places of residence, potentially to unreconstructed or occupied houses. Further compounding the situation is the gap between housing reconstruction needs and ongoing reconstructions. According to UNHCR, this gap for 2001 is 22,400 housing units.

14. While the State and Entities must ensure consistency and non-discrimination in the implementation of the property laws, the same must be done to ensure that the physical security, economic rights and social protections of the people are assured. Third countries should remain wary of returning certain categories of refugees to Bosnia and Herzegovina, especially when those refugees are determined to be in continued need of international protection by UNHCR or are from areas where there is no genuine climate of security for ethnic minorities.

15. Further complicating the state of return, there are still 23,500 Croatian Serbs, according to UNHCR, in Bosnia and Herzegovina, primarily in the Banja Luka area. This seriously affects return from other parts of the country. The Special Representative supports the recommendation of the Committee on Economic, Social and Cultural Rights calling upon Croatia to take effective measures to accelerate the return of Croatian refugees, particularly ethnic Serbs without discrimination. In particular, Croatia should address property, occupancy rights, naturalization, and citizenship (see E/C.12/1/Add.73). Such moves would have a great impact on alleviating the refugee situation in Bosnia and Herzegovina. As a member of the Commission on Human Rights, the Republic of Croatia should stand firmly behind efforts to find a solution to this problem.

16. Legal impediments to the return and reintegration of refugees continue to be of utmost concern throughout the region. It is not only the form of law but also its practical effect that needs to be addressed to guard against direct and indirect discrimination. Issues such as reacquisition of permanent residence and access to documentation evidencing status, property, tenancy rights and welfare rights plague resolution of the situation of many potential returnees. The recent announcement by the Presidency of Bosnia and Herzegovina that dual citizenship agreements would be pursued with Croatia and the Federal Republic of Yugoslavia is a welcome development and one which, it is hoped, will gain support from neighbouring countries.

### E. Economic, social and cultural rights

17. Most of the human rights violations seen in Bosnia and Herzegovina are predicated on some form of discrimination. While the poor economic situation affects the country as a whole, it has a disparate impact on vulnerable groups such as minorities and returnees. Allegations of differential access to employment, social welfare, health, public utilities and education continue to be reported. The international community should do its utmost to try to ensure that development policies for Bosnia and Herzegovina emphasize the direct linkage between satisfactory human rights standards and sustainable development.

18. Unemployment runs high, with official estimates at 40 per cent for the State and higher in the Republika Srpska. The national social protection system is unable to respond adequately to the acute social needs, and the lack of economic regeneration and decreasing international aid serve only to reinforce the problem. Even where available resources are insufficient, however, the State is obligated to ensure the widest possible enjoyment of the rights under prevailing circumstances.

19. The complex division of authority between Entities plaguing health care and protection may be ending. On 5 December 2001, the Directors of the Entity (and Brcko District) health insurance funds signed an agreement that all those insured in one Entity can receive health coverage in the other, with specific provisions entitling pensioners to added benefits.[4] Notably, this is the first major inter-Entity agreement prepared and negotiated without the intervention of the international community. This agreement and the manner in which it was negotiated are strongly endorsed by the Special Representative.

## F. Irregular migration: trafficking

20. Irregular migration into Bosnia and Herzegovina is an ever-increasing problem. An inadequate legislative framework coupled with an absence of procedural regulations has created a situation where persons of particular concern, namely asylum-seekers, trafficked persons, stateless persons, and those at risk of torture or inhumane or other degrading treatment, cannot be appropriately identified and singled out for special protection.

21. During the course of 2001, the State failed to adopt regulations for the implementation of the 1999 Law on Immigration and Asylum and, therefore, superseded legislation was generally applied, resulting in unpredictable procedures for entry, expulsion and deportation. As numerous inadequacies have been identified within the provisions of the Law since its promulgation, the Law itself is being amended. Such efforts are to be encouraged as such amendment would not only establish a more comprehensive migration framework and overcome identified obstacles to the Law's practical implementation, it would also avoid additional burdens on overstretched State ministries in the long term.

22. The situation with regard to irregular migration is exacerbated by the fact that the State Border Service controls only 75 per cent of the border, leaving some crossings under the control of the Entity or cantonal police. The Special Representative welcomes efforts to increase State Border Service control and expects that this will have significant impact on controlling migration.

23. Trafficking in persons, to date all women and children, remains a serious problem in Bosnia and Herzegovina. It is in itself a violation of human rights and it gives a boost to organized crime.

24. Evidence demonstrates that a substantial part of the market for trafficked persons has been created by the large civil and military international presence in Bosnia and Herzegovina. More attention has to be paid to ensuring that there are codes of conduct and that these are rigidly and transparently implemented.

25. The Government is to be applauded for the recent adoption of a national plan of action to combat trafficking.

26. On 11 September 2001, the Council of Ministers adopted a plan outlining measures to be considered in combating terrorism in Bosnia and Herzegovina. To date, legislative amendments and proposed new laws have been discussed. In this process, the Special Representative urges the State to adhere strictly to its international obligations to uphold human rights standards and the rule of law.

27. Bosnia and Herzegovina must be made accountable for the fulfilment of its obligations under international conventions to respect, protect and fulfil the human rights of all persons without discrimination. Currently, Bosnia and Herzegovina is overdue in its reporting to the United Nations treaty bodies. Although understandable in the recent past, Bosnia and Herzegovina, as part of the accountability process, must begin to meet these obligations.

## II. FEDERAL REPUBLIC OF YUGOSLAVIA

28. The Special Representative undertook a visit to the Federal Republic of Yugoslavia (FRY) between 27 August and 4 September 2001. During his visit, the Special Representative met in Belgrade with senior members of the Federal Government including President Vojislav Kostunica - and with the Ministers of Foreign Affairs, Justice, and National and Ethnic Communities, respectively, and with Serbian Deputy-Prime Minister Nebojsa Covic and other senior government officials in the Republic of Serbia. In Podgorica, he met with officials of the Republic of Montenegro, including the Ministers of Foreign Affairs, the Interior, Justice, and National and Ethnic Groups. In Kosovo, he met with the Special Representative of the Secretary-General, Hans Haekkerup, the Commander of the Kosovo Force (KFOR), senior officials of UNMIK and local political leaders. Throughout the region, he met community leaders and representatives from civil society who are dealing with human rights issues and with members of the international community, including the Organization for Security and Co-operation in Europe and the United Nations.

29. The Special Representative wishes to acknowledge that throughout the visit, he received good cooperation from all authorities and he enjoyed frank and open dialogue, not only on progress made, but also on obstacles to the enjoyment of human rights within the Federal Republic of Yugoslavia.

### A. General observations

30. The human rights situation has improved considerably since the dramatic events of October 2000 that led to the ousting of former President Slobodan Milosevic and opened the way for democratic changes in Serbia and the Federal Republic. The opposition coalition that defeated Mr. Milosevic, the Democratic Opposition of Serbia (DOS), overwhelmingly won democratic elections in Serbia in December 2000, formed a new Government in February 2001, and spent most of the year initiating reforms of legal codes and State institutions that had been used by the former Government to control political power and repress opposition.

31. The country is still in a state of transition with many institutional changes having been undertaken but much still to be done to consolidate these efforts. The Federal Government and the Republic governments in Serbia and Montenegro continue to face a number of serious challenges in effecting this reform process. First, the country's economy was devastated by 10 years of war and sanctions, leaving the new authorities to undertake economic reform when national social, health and educational systems were in a state of serious degradation. Second, the reform process has been severely impeded by the unresolved status of the Republic of Montenegro within the federal structure and the lack of practical cooperation and coordination between the different Federal and Montenegrin authorities. Third, a conflict in southern Serbia launched by ethnic Albanian armed groups has preoccupied the attention of the federal authorities for a significant part of the year. The armed conflict has been largely resolved but considerable work remains to be done in the area of political reform and economic reconstruction in the region. And fourth, deep political disagreements between the two principal parties in the DOS coalition have adversely affected progress on key legislation, including laws directly related to human rights and the rule of law.

32. Within this context, federal authorities have made a number of significant achievements. Senior government officials within the Federal Government and the Republics of Montenegro and Serbia have reiterated their commitment to undertake the reform of those national institutions that are necessary for the protection of human rights, notably in the areas of national minorities, justice, law enforcement and the media. Progress has been made in addressing a number of historical human rights violations committed by the former Government prior to October 2000, including the release of many political prisoners, investigations into the fate of persons of different ethnic groups missing during the armed conflict in Kosovo in 1999 and criminal investigations into murdered or other disappeared persons. The conflict in southern Serbia was successfully resolved though negotiations with ethnic Albanian leaders, the armed groups and the North Atlantic Treaty Organization. Relations with UNMIK in Kosovo improved throughout the year, leading to agreement on a strategy for cooperation on a number of key issues and endorsement by the federal authorities for Kosovo Serb participation in the Kosovo parliamentary elections that were held on 17 November 2001.

33. The Special Representative remains concerned, however, about progress on key legislative reforms and the process through which they are drafted and promulgated. Institutional reforms necessary to establish the rule of law, reform the judiciary and police, combat organized crime (including trafficking in human beings) and establish the basis for a free media have moved slowly. While a package of laws on judicial reform has been adopted, legislation governing labour, local self-government, a national human rights institution and the media are still pending. Of equal concern is the process by which reforming legislation is drafted and adopted. There is no consistent and transparent mechanism - including an opportunity for public consultation and comment - whereby laws are drafted and promulgated. The Special Representative repeats his earlier concerns about the piecemeal and ad hoc way in which the process is presently undertaken. Crucially, it remains difficult to obtain information on the status of such draft laws and to review and comment on them. The Special Representative is aware that this is a difficulty faced by national non-governmental organizations and international agencies alike.

34. The situation in southern Serbia remains largely peaceful and good progress has been made, notably in the areas of peace and security. Nonetheless, a number of key commitments made by the federal and Serb authorities and the international agencies have not been fulfilled yet, and this is contributing to an increased level of discontent amongst the ethnic Albanian community.

35. Owing to the lack of physical security for ethnic minorities in Kosovo, the prospect of any significant numbers of displaced persons returning to Kosovo remains bleak, at least in the short to medium term. The lack of any clear and durable solution for displaced persons raises serious human rights issues of concern to the Special Representative, particularly the unclear legal status and economic and social rights of internally displaced persons living in Serbia. On another issue relating to Kosovo, approximately 200 Kosovo Albanians, detained under the former Government in connection with the Kosovo conflict, remain in Serbian prisons in spite of a general agreement between the Federal Republic and UNMIK to transfer them to Kosovo.

36. In Kosovo itself, UNMIK took two major steps towards the goal of substantial autonomy, expressed in Security Council resolution 1244 (1999), by adopting a provisional constitutional

framework and then carrying out successful Kosovo-wide elections for a parliament and executive. The Special Representative notes these important achievements, and particularly notes the successful effort by UNMIK to encourage Serb participation in the elections. Nonetheless, the position of minorities in Kosovo remains tenuous, efforts by UNMIK to address serious problems with the judiciary through the creation of a special police-judiciary "pillar" have not yet borne fruit, and more needs to be done to integrate the human rights dimension into the Mission's legislative and institution-building work.

## B. Situation in Serbia (excluding Kosovo)

### 1. Programme of legislative reform

37. The Special Representative welcomes progress made under the ambitious programmes of legislative reform undertaken by the Federal and Republic Governments. Progress in the areas of penal reform - such as the Federal Penal Code and Code of Criminal Procedure and, among others, laws to decentralize and promote a multi-ethnic police force and on anti-discrimination, local self-government, the judiciary, ethnic minorities, the creation of national human rights institutions and independence of the media - will have a significant effect on the overall quality of human rights protection in Serbia. For example, the draft law on changes to the Penal Code provides for a new crime of "violence against members of another ethnicity or religious community" and for a new chapter which contains crimes of "corruption" in various fields such as justice, police, administration, and health. It is of concern, however, that the offence of "spreading false news" is retained in the new draft and may be an unreasonable restriction on the freedom of the media. The draft law on local self-government adopted by the Government of Serbia in December 2001 creates the institutions of "Ombudsman for Local Self-Government", as well as a "Council for Inter-ethnic Relations" in municipalities of ethnically mixed population.

38. Whilst these legislative reforms are welcomed, the Special Representative remains concerned that the present process of legislative reform continues to develop in an ad hoc, rather than a coordinated framework with human rights as the core and founding principles. The lack of a consistent mechanism whereby legislation is drafted, adopted and promulgated can lead to contradictions and inconsistencies, particularly between the Federal Constitution and the Constitution of the Republic of Serbia. As all draft laws must be fully compatible with the Federal Republic's obligations under international human rights law, the Special Representative encourages better and more centralized coordination between authorities at the Federal and Republic levels and a broader and more transparent basis for consultation with civil society as part of that process. The Special Representative recommends that all key draft legislation be officially gazetted and that a reasonable period be established during which interested members of civil society and the international community can make substantive contributions. This will improve the coherence and overall credibility of the legislative process.

### 2. National human rights institutions

39. A number of Federal and Republic ministries have taken initiatives to develop national ombudsman offices. These include, inter alia, draft laws on a generic ombudsman prepared by the Federal Ministry of Justice and a thematic ombudsman for ethnic minorities supported by the

Ministry of National and Ethnic Communities. The Special Representative welcomes these and other efforts to establish independent and functional national institutions. However, he cautions against the creation of a multiplicity of national and municipal structures that are not adequately funded and functionally independent. He is of the view that the structure and functions of such offices should be better coordinated inter se - preferably in a single unified entity - and that such an entity should be fully compatible with the Paris Principles established by the United Nations for national human rights institutions. In this context, he welcomes the efforts by the Government of Serbia to prepare and adopt legislation to create a national ombudsman and, in particular, the three-month period that the Government has allowed for general public consultations, including with the OSCE, OHCHR and the Council of Europe. This mechanism of transparency and public dialogue is one that he would recommend for all other legislative processes that relate to human rights.

### 3. Police reform

40. The Special Representative notes that reform of the police is and remains a priority area of importance to the protection of human rights in the Federal Republic of Yugoslavia. He welcomes the steps taken by the Serbian Ministry of the Interior, in association with the OSCE, to undertake a major assessment of measures required to ensure a professional police force in the country. The result of the assessment was a broad range of measures, including legislative reform of the Serbian Police Law, improved recruitment and training on all aspects of policing - including a police code of ethics and human rights that reflects international and European standards - and recommendations to improve the multi-ethnic and gender balance within the police, community relations and the image of the police in the country. The Special Representative welcomes these efforts to depoliticize and professionalize the police force and calls on all relevant actors, including international donors, to implement the measures as soon as possible.

41. He remains concerned, however, about a number of specific allegations of human rights violations by individual members of the police force - including allegations of police ill-treatment and brutality at the time of arrest or whilst persons are in police custody - and by reports of racial prejudice among law enforcement officers, particularly against Roma. These include allegations of a 12-year-old Roma boy being ill-treated at a Belgrade police station on 21 June 2001; a Belgrade Roma beaten by four plain-clothes policemen at Zvezdara police station on 5 March 2001; two Roma beaten by police at Backa Topola on 7 May 2001; a Roma family from Kosovo mistreated by police in Novi Sad on 12 June 2001; and Roma children beaten by a police patrol in Novi Sad on 22 September 2001. In all of these cases, it is alleged that there has been little or no action taken to investigate the incidents.[5]

42. Whilst the Special Representative is satisfied that these allegations do not disclose any systemic or systematic pattern of abuse within the police force in general, they do indicate the lack of an effective "supervisory mechanism" by which allegations can be effectively and promptly investigated and, where necessary, effective disciplinary action taken against the perpetrators. In the context of broader police reform, he calls upon the relevant authorities to establish such a mechanism as a matter of priority.

### 4. Protection of national minorities

43. The Special Representative notes the good progress made to strengthen the legislative framework for the promotion and protection of ethnic minorities. On 11 May 2001, the Federal Republic of Yugoslavia acceded to the European Framework Convention for the Protection of National Minorities, which accession entered into force on 1 September 2001. At the Federal level, the Government expects shortly to pass a law on protection of national minorities - which contains the basic protections prescribed by the European Framework Convention and includes provision for an ombudsman function. The Special Representative notes the linkage with other draft laws such as a national law on an ombudsman, a law on local self-government and a law on anti-discrimination. He hopes that the Federal and Republic authorities will adopt this package of measures as soon as possible but stresses the importance of broad-based public consultation and coherence between the various pieces of legislation. He notes, however, that the Constitution of the Republic of Serbia provides lesser guarantees of minority rights than the Federal Constitution, leaving minority members living in Serbia more vulnerable, and that there are no special legal remedies for the protection of minority rights in the constitutions of the Yugoslav republics.[6]

44. The Special Representative also recognizes the progress made by the Federal Ministry for National and Ethnic Communities not only in strengthening the legislative framework, but also in creating greater public awareness of minority rights through a tolerance campaign launched in November 2001. Positive steps also include the opening of an office in southern Serbia, the signing of a bilateral agreement on the protection of the rights of national minorities with Hungary, and the initiation of the same process of bilateral agreements with neighbouring countries including Romania, the former Yugoslav Republic of Macedonia and Croatia. He also encourages the Federal and Republic of Serbia governments to examine the practical links between the protection of minority rights and education - in particular the importance of integrating human rights and minority rights awareness into teacher training and school curricula.

### 5. Judicial Reform

45. The Special Representative welcomes steps taken in the Republic of Serbia to reshape and reorganize the court system through the adoption, in November 2001, of a package of four new laws: the Laws on Courts, the Law on Judges, the Law on the High Council of Justice and the Law on the Public Prosecutor. The Law on Courts establishes courts of general jurisdiction (Municipal, District, Appeal and Supreme) and courts of special jurisdiction (Trade, Higher Trade and Administrative). The Law on Judges addresses the status of judges, including a more transparent and independent process for the nomination, promotion and dismissal of judges, and ensures that all issues relating to their status remain in the hands of the judiciary. However, it is possible that the transfer of judges to another court even to a lower jurisdiction and without his/her approval, for up to one year could be used to punish those who represent a dissident voice. The Law on the High Council of Justice establishes a High Council to propose candidates to the Parliament for the positions of president of the courts, judge and public prosecutor and the positions of lay judge and deputy prosecutor. The Law on the Public Prosecutor provides for a permanent position of a public prosecutor and deputy prosecutor for an eight-year term of office, with the possibility of reappointment.

46. These structural changes, including increased remuneration for judges, will be essential in establishing a judiciary that is fully independent and free from the political influence that characterized the regime of President Milosevic. The Special Representative welcomes these developments but also repeats his concern that in future, such legislative processes should include broader-based public consultation, which was lacking in the promulgation of the present package of measures.

### 6. Ethnic Albanian Kosovars in detention in Serbia

47. The Special Representative welcomes the release from detention of a number of ethnic Albanians from Kosovo under the Amnesty Act passed in early 2001 and the release of the so-called "Gjakove/Djakovica Group" of 143 ethnic Albanians following a court review. He remains concerned, however, that approximately 200 ethnic Albanian Kosovars are still in detention, of whom approximately one half were convicted of ordinary criminal offences and the other half convicted of offences characterized as political, including terrorist-related acts. The Special Representative remains greatly concerned that these cases have not been resolved more than a year after UNMIK and Federal authorities began to discuss them. UNMIK and Federal authorities recently agreed to return all of these individuals to UNMIK's jurisdiction in Kosovo and the Special Representative urges the relevant authorities to effect the transfer promptly.

### 7. Missing persons

48. The Special Representative is advised that approximately 5,000 persons of all ethnicities remain missing and presumed dead following the conflict in Kosovo in 1999.[7] He remains deeply concerned at the slow progress being made in carrying out exhumations and forensic analyses of remains discovered in Serbia and in the province of Kosovo. He urges all authorities, in particular the Serbian and UNMIK authorities, to improve their practical cooperation on this issue and encourages international actors to provide the necessary technical and financial support to enable this work to continue.

49. The Special Representative is also concerned at the lack of progress in criminal investigations relating to other missing or murdered persons, notably the disappearance from Belgrade on 25 August 2000 of former Serbian President Ivan Stambolic and the murder of journalist Slavko Cheruvija on 11 April 1999. However, he welcomes the recent commitment made by the Serbian Minister of Justice, Dusan Mihajlovic, to advance these and other outstanding police investigations.

### 8. Mass graves in Serbia

50. In recent months, Serbian authorities have discovered more than 400 bodies[8] in five mass graves reportedly containing the remains of Kosovo Albanians (including women, children and the elderly) whose bodies had been transported from Kosovo and buried in Serbia in 1999. Serbian police and justice officials are working closely with forensic experts to establish the identities of remains at these sites, but progress is slow. Many of the bodies are buried at sites controlled by Serb security services. The Special Representative is deeply concerned that the police investigations have not yet appeared to make much progress and the issue of the mass graves has largely disappeared from public discussion. One of the central challenges facing

societies emerging from conflicts, particularly ethnic-based violence, is to begin a process of coming to terms with the past, identifying crimes committed in the name of the State and arresting and holding those responsible. The discovery of these mass graves in Serbia, particularly around Belgrade, is an opportunity to face the crimes of the recent past openly and thoroughly. The Special Representative urges the Federal and Serbian authorities to conduct a full and transparent investigation, and also encourages more public discussion of the issues of human rights and responsibility associated with these crimes.

### 9. Displaced persons

51. A recent census undertaken by UNHCR disclosed that there are still approximately 400,000 refugees and 200,000 IDPs living in the Federal Republic of Yugoslavia.[9] For many, their prospects for immediate or longer-term return to their places of former residence remain bleak. The Special Representative recognizes that the presence of such a large number of displaced persons places a heavy burden, in humanitarian and financial terms, on the host State and the international humanitarian agencies supporting them. Nonetheless, he notes that any durable solution for displaced persons of the region - whether this involves local integration or return - must be predicated on enjoyment by everyone of the full spectrum of civil, political, economic, social and cultural rights and in full conformity with the principle of non-discrimination.

52. On the situation of IDPs, the Special Representative expresses his deepest concern that the present climate of violence and insecurity for ethnic Serbs and other ethnic minorities in Kosovo means that few people are able to return to their homes. He calls on UNMIK and KFOR to take all necessary steps to protect the physical safety and human rights of all those who choose to return to Kosovo. For those IDPs who cannot reasonably return to Kosovo, the Special Representative urges the Republic of Serbia to ensure their full and prompt integration. He also urges donors and international humanitarian agencies to maintain effective programmes for the support and protection of IDPs, notwithstanding the transitional phase from humanitarian to development activities.

53. He expresses his particular concern about the situation of those living in unofficial collective centres around Belgrade. Not having official residence documents ("green cards"), such persons may have difficulty in securing entitlements to basic social rights and services, including secure accommodation, utilities and financial assistance. The Special Representative calls on all relevant national authorities and international agencies to examine the special situation of IDPs in Serbia in order to ensure their full enjoyment of economic and social rights - in particular, those contained in article 11 of the International Covenant on Economic, Social and Cultural Rights and principle 18 of the Guiding Principles on Internal Displacement - as well as their civil and political rights.

54. On the situation of refugees, the Special Representative welcomes steps taken by the Federal authorities to amend the Citizenship Act of 1997 to allow refugees to obtain dual citizenship. He also welcomes and encourages the Government to conclude bilateral arrangements with the Governments of Bosnia and Herzegovina and Croatia that will regularize the legal status and secure the human rights of all refugees in the region. The Special Representative urges others States, including Bosnia and Herzegovina and Croatia, to take

reciprocal steps to allow the prompt and full restoration of human rights to refugees, including their housing and property rights. He also urges the Serbian and Federal authorities to disclose and release all official registry records removed from Croatia and Bosnia and Herzegovina during the conflict that may verify the legal status and property rights of refugees now residing in the Federal Republic of Yugoslavia

### 10. Freedom of expression and the media

55. The Special Representative recognizes the vast improvement in the freedom of expression and the situation of the media in Serbia since October 2000. He is not aware of any journalist imprisoned, media fined or equipment seized, as was frequently the case before October 2000.

56. In the print media, the Special Representative welcomes the repeal by the Serbian Parliament in February 2001 of the oppressive Information Law, 1998. By way of compensation to the owners and editors of the print media who had been punished under the Law, the Government has returned approximately 11.4 million dinars (out of a total of 31 million dinars) in fines. However, whilst the abolition of the Serbian Ministry of Information, removes a form of State censorship of the media, it has left something of a vacuum as no one in Government has been designated to deal systematically with the transitional aspects of the media. Until appropriate laws regulating the media are adopted, the media may continue to be exposed to political pressures, their independence questioned and their contribution to the processes of democratic transition reduced.

57. The Special Representative welcomes these positive developments but expresses concern over two incidents involving government demands for disclosure of confidential sources in cases of public interest. The first, in July 2001, involved a request that editors (journalists) disclose their confidential sources for published articles regarding the "Gavrilovic case", and the second, in November 2001, concerned the "Hague list of policemen".

58. The Special Representative also recognizes that the greatest threat to independent journalism and freedom of the media in Serbia comes from individuals or groups involved in some form of criminal activity and who are threatened by media exposure. A journalist in Jagodina, Milan Pantic, investigating crime and corruption in his home town, was killed on 11 June 2001 after receiving numerous death threats. Slavko Curuvija, owner of Evropljanin magazine and Dnevni Telegraf newspaper, was killed by unknown gunmen in front of his house in April 1999 and the case remains unresolved. These cases should be investigated and the perpetrators held accountable.

59. In the electronic media, the draft law on public broadcasting is still to be adopted; this has created a situation of uncertainty in the allocation of frequencies. Over 1,000 radio and television stations are broadcasting, many of them operating without valid licences. This makes development and planning almost impossible and prevents the stations from seeking stable sources of finance. In the absence of an independent body overseeing the functioning of the State Television (Radio Television Serbia-RTS), as foreseen by the draft law, and the abolition of subscription fees, previously appended to electricity bills, the RTS is largely dependent on the Government's funds, and thus less likely to be critical of the authorities. The municipal radio

and television stations, established and owned by the local municipalities, are also in the category of State media and cannot be privatized without prior consent of the local governments. This dependency on local governments may limit the function of an independent media to serve as guardians of public interests.

### C. Particular situation in southern Serbia

#### 1. General situation

60. In May 2001, an agreement was reached between the Federal and Serbian authorities, led by Serbian Deputy Premier Nebojsa Covic, NATO and representatives of the ethnic Albanian community, which brought an end to most of the violence in the Presevo valley region of southern Serbia (the municipalities of Presevo, Bujanovac and Medvedja). The ethnic Albanian Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB), which had been in conflict with the Yugoslav security forces, disbanded and disarmed in return for an amnesty from prosecution. The Ground Safety Zone (GSZ), which restricted the presence of Yugoslav security forces along the boundary between Serbia proper and Kosovo, was relaxed to allow the gradual return of Serbian police and the Yugoslav army into the area.

61. The Special Representative was encouraged by the achievement of this important agreement and the successful implementation of the initial phases. Although the situation remained generally stable through the last months of 2001, the Special Representative is nevertheless concerned that several fresh violent incidents with an apparently political motivation have occurred in the region since August 2001. The perpetrators of the incidents, which include the killing of two police officers in August, are unknown, but two new ethnic Albanian armed groups have claimed to be active in the area. One has claimed responsibility for the killing of the police officers.

#### 2. Implementation of the peace plan for southern Serbia

62. Beyond the agreements on the disarmament of the UCPMB and the relaxation of the GSZ, the core of the agreement on a peaceful solution to the conflict was a plan presented by the Government for a series of measures to improve the social, economic and political rights of ethnic Albanians in southern Serbia (the "Covic Plan").

63. The Special Representative observes that respect for human rights has improved substantially in terms of the behaviour of police. Since June 2001, complaints of ill-treatment by police of ethnic Albanians in southern Serbia have been infrequent in comparison with the period of conflict. The Code of Criminal Procedure and other laws and regulations have generally been respected in the execution of police operations. Other measures designed to contribute to sustaining this momentum are in process. For example, some 100 police officers, including ethnic Serbs, ethnic Albanians and Roma, have been trained and deployed as part of a new multi-ethnic police force for the three municipalities. A further 300 officers are expected to be trained and deployed in the course of 2002. The training, carried out under the auspices of the OSCE, includes elements on the application of international human rights standards and police ethics.

64. The Special Representative is nevertheless concerned that a substantial number of other police officers are present in the region, mainly on rotation from other parts of the country, who have received no additional human rights-orientated training. He is also concerned that few visible actions have been undertaken to resolve complaints of human rights violations outstanding from the period of conflict.

65. The Special Representative is concerned that progress on the implementation of the plan has been limited and that the main areas of progress have so far been confined to the security situation and infrastructural improvements. More visible progress needs to be made in fulfilling other commitments made under the Covic Plan. These relate to the reintegration of ethnic Albanians into employment in the public service sector and the local economy and the more effective representation of ethnic Albanians in municipal executive bodies. These positive measures are necessary to correct past discrimination in employment and education practices and to redress the loss of employment by many ethnic Albanians who fled during the armed conflict in 1999. Delays in holding new municipal elections and adjusting electoral units to better represent the ethnic make-up of the population are impeding dialogue between all those concerned and threatening the implementation of the broader plan and with it, respect for human rights.

### 3. Displaced persons

66. UNHCR estimates that some 15,000 ethnic Albanians fled from the three municipalities during the Kosovo crisis in 1999 and the conflict that followed in the Presevo valley. Another 3,000 or more fled immediately prior to the return of the Yugoslav army to the GSZ. Most sought refuge in Kosovo. The Special Representative notes with satisfaction that some 5,300 persons returned since the implementation of the Peace Agreement commenced. However, most of the returnees have gone back to Kosovo for the winter because of the poor conditions of their houses or village infrastructure. The Special Representative is hopeful that they will consider returning again in the spring, but is concerned that this will depend on further progress in implementing the Covic Plan.

### 4. International support

67. The Special Representative notes that both the Covic Plan and representations by the ethnic Albanian community call for a substantial contribution from the international community in terms of monitoring and political and financial support. He is of the view that a continued and active presence of United Nations agencies, such as the OHCHR and other humanitarian and development-based agencies, will be important in ensuring proper implementation of the Covic Plan over the short to medium term.

### 5. Ongoing human rights violations

68. The Special Representative is concerned that a number of complaints of human rights violations by police were recorded in the last months of 2001. The most serious incident occurred on the night of 26 October when three ethnic Albanians were stopped by unidentified police officers near the village of Strezovce. The victims were searching for lost cattle. Allegedly, the three men were held for one hour in the open during which they were kicked,

punched, beaten with rifle butts and otherwise ill-treated. The ill-treatment ceased only when a local police officer came upon the scene and intervened. Two of the victims needed hospital treatment for their injuries. The Special Representative urges the authorities to make further efforts to avoid the repetition of such incidents and to strengthen the formal complaints mechanism through which such incidents can be reported and investigated. The Special Representative notes that the perpetrators were apparently from the police units deployed in the region from other parts of the country. He therefore stresses the need for additional attention to the need for human rights training and effective control of police officers in the region who currently fall outside of the multi-ethnic police project.

## D. Situation in Kosovo

### 1. General situation

69. The Special Representative notes the significant developments in the process of self-governance as anticipated by Security Council resolution 1244 (1999) following the calm and orderly election for a Kosovo-wide legislative Assembly on 17 November 2001. The Special Representative particularly welcomes the progress UNMIK and OSCE have made in engaging the Kosovo Serb community and other minorities in the electoral process. In this regard, the Special Representative welcomes the signing on 5 November 2001 of the "Common Document" between UNMIK and the Federal Republic of Yugoslavia and encourages further constructive and practical dialogue between the two authorities.

70. The Special Representative welcomes the establishment of the Provisional Institutions of Self-Government. He emphasizes that these institutions, facilitated and advised by UNMIK and other actors in the international community, must operate within the bounds prescribed by resolution 1244 (1999) and the Kosovo constitutional framework.

71. The first organized return to Kosovo of ethnic Serb IDPs - a small group of 54 individuals to an isolated Serb village - took place in August 2001, but the current security situation does not permit any larger-scale return programmes. The Special Representative underlines the importance of the right of all people to return to their homes and calls on the international community and the political leaders in Kosovo to facilitate the return of Albanians, Serbs and members of other minority communities to their homes in Kosovo. The Special Representative notes the recent establishment of an Office of Returns and Communities with a director under the direct supervision of the Special Representative of the Secretary-General and encourages UNMIK and the Provisional Institutions of the Self-Government to make further efforts to ensure a sustainable process of return.

72. The Kosovo Ombudsperson has become actively and visibly engaged in addressing human rights problems that fall under his mandate. The Special Representative calls on all officers within UNMIK, KFOR and the Provisional Institutions of Self-Government to cooperate fully with the Ombudsperson, including the implementation of his recommendations and irrespective of whether his views are legally binding.

73. Generally, the Special Representative remains concerned by the slow progress in three key areas of relevance to his mandate: (i) the human rights situation and physical protection of ethnic minorities in Kosovo; (ii) the quality of the rule of law; (iii) the extent to which human rights standards and practices are integrated into the work of UNMIK and that of KFOR.

### 2. Situation of ethnic minorities

74. The Special Representative remains deeply concerned about the physical security and human rights of members of the Serb and other minority communities. Most of the estimated 100,000 Serbs remaining in Kosovo live in enclaves protected by heavily armed KFOR soldiers with little or no freedom of movement. Many do not enjoy full, effective and safe access to health care, social services, schools or employment opportunities.

75. Although violence against minorities has not notably increased over the last few months, sporadic attacks continue to occur. For example, in November 2001, a Serb woman, Milica Mirosavljevic, aged 60, was killed and her husband, Stojadin, aged 70, seriously wounded when unknown attackers opened fire and threw a hand grenade at them in Obilic (10 kilometres from Pristina). Other violent incidents include an attack on Kosovo Serb journalist and RTS employee Rados Radonjic, on 20 October 2001.

76. Both KFOR and UNMIK continue to face serious challenges in identifying, arresting and fairly judging those involved in ethnically based crimes. The existing climate of intimidation and insecurity poses a major threat to the return of displaced people to Kosovo from Serbia proper and to the longer-term prospects for and reputation of Kosovo as a tolerant and multi-ethnic society.

77. The Special Representative considers the general level of violence in Kosovo society unacceptably high. This in turn has consequences for the minorities as well as the general population at large. The killing of Kosovo Albanian journalist Bekim Kastrati of Bota Sot newspaper, on 19 October 2001 and an attack on the president of Obilic municipality and local leader of the League for a Democratic Kosovo (LDK) party on 2 November 2001 are of particular concern since these attacks strike at the very core of civil society.

78. The development and implementation of an UNMIK coordinated policy on minority issues in Kosovo is essential for the successful implementation of resolution 1244 (1999). In this regard, the Special Representative urges all concerned parties to support the newly established Advisory Board on Local Communities to the Special Representative of the Secretary-General. The Advisory Board is designed as a high-level representative body with responsibility to provide advice and recommendations to the Special Representative of the Secretary-General on the next steps to be initiated to promote returns in conditions of safety and dignity. The Special Representative welcomes the appointment of the new Principal Deputy to the Special Representative of the Secretary-General who acts as Chair of the Advisory Board on Local Communities.

79. While physical security remains an overriding concern, the serious economic and social situation is another factor affecting the minority communities. The situation of the Bosniak and Gorani communities in Prizren area is generally worsening. Many families continue to leave due

to the lack of employment, lack of access to the education and lack of basic facilities such as potable water, electricity and telephone lines. According to UNHCR, it is estimated that between June and September 2001 at least 471 Bosniak individuals departed from Prizren for destinations outside of Kosovo.

## 3. Rule of law

### Judicial system

80. The Special Representative welcomes the appointment of the new director of the UNMIK Department of Judicial Affairs (DJA), the work of the Judicial Investigation Unit responsible for analysing and evaluating the functioning of the courts and public prosecutors' offices and investigating complaints against judges and prosecutors, and the proposal to increase the number of international judges and prosecutors from the current 15 to over 30 in 2002.

81. The increased number and quality of judges will be crucial if deficiencies in the prosecution of criminal cases related to attacks on minorities are to be adequately addressed (see above section on minorities).

82. Also of serious concern are similar deficiencies relating to the trafficking in persons and other sexually related crimes. Despite the relevant laws being in place, specifically UNMIK regulation 2001/4, the judiciary is generally inefficient in applying the mechanisms and remedies envisaged therein. The Special Representative notes with concern that these inefficiencies are compounded by the fact that a Victim Assistance Coordinator has not yet been appointed as required by the regulation. This greatly limits the assistance and protection available to victims of such crimes.

83. Women are trafficked for sexual exploitation, both within Kosovo and from Kosovo. It is estimated that there are currently 85 brothels in Kosovo where women and young girls are forced into prostitution. Disturbingly, it is reported that approximately 10 per cent of all known cases of trafficking between February 2000 and August 2001 were of young girls under 18 years of age (typically 14-17 years old). Services available for Kosovo victims of trafficking who are rescued by the police are still very limited. Whilst the Centres for Social Work (CSW) are mandated by law to protect children, most social workers still do not have enough knowledge and skills to deal with such very sensitive protection issues. The Special Representative urges that preventive activities be developed and that such programmes specifically target children from the most marginalized groups of the society, as these are most likely to be victims of criminal groups involved in trafficking.

84. The DJA is facing major challenges building a post-conflict legal system and the Special Representative commends UNMIK for creating a court system that is now reasonably functional. Nonetheless, major problems remain. The judiciary has few judges or prosecutors from ethnic minorities because their physical safety cannot be guaranteed in the present climate of insecurity. In light of this, the Special Representative welcomes the establishment of the Minority Affairs Unit in the DJA with a view to creating the capacity to handle minority issues.

85. UNMIK has taken a number of concrete steps to redress these challenges. These include the hiring of international judges and prosecutors as mentors for ethnic Albanian judges and the creation of a special jurisdiction for ethnic crimes that would place these cases largely in the hands of international judges and prosecutors. UNMIK has also placed the judiciary and the police in a new administrative structure headed by a Deputy Special Representative of the Secretary-General in order to bring greater coordination and coherence to legal reform. The Special Representative welcomes these reforms and hopes these will lead to improvements in the conduct of due process.

**Detention by KFOR and/or executive order of the Special Representative**

86. The Special Representative is concerned about practices in which persons are detained either pursuant to an executive order of the Special Representative of the Secretary-General or by KFOR under the general mandate and terms of engagement given by Security Council resolution 1244 (1999). In the former cases, some orders have been applied to criminal suspects who have been ordered released by a court or prosecutor. In these cases, executive detentions by the Special Representative of the Secretary-General are justified on the basis of security imperatives that involve sensitive intelligence information on extremist and organized criminal groups that cannot be shared with a court - or cannot be used as evidence in a trial - or must be invoked because of deficiencies in the normal criminal court process itself.

87. The Special Representative therefore welcomes recent steps taken by UNMIK to improve the legal basis on which executive orders to detain are made, including the commissioning of an independent detention review committee to recommend to the Special Representative of the Secretary-General whether the evidence justifies continued detention. The Special Representative notes that this remains, nonetheless, an extrajudicial measure and recommends that these decisions be returned to the judiciary, with appropriate legal safeguards, as soon as possible.

88. The situation of military detentions by KFOR is based on rather more obscure legal grounds. KFOR routinely arrests and detains individuals on an extrajudicial basis - mostly ethnic Albanians suspected of fighting in the former Yugoslav Republic of Macedonia and southern Serbia - citing resolution 1244 (1999), the Kumanovo Military Technical Agreement with the Federal Republic of Yugoslavia and customary international law as the legal sources of KFOR authority for detentions. The Special Representative fully recognizes the difficult security environment prevailing in Kosovo, not least the risk of ethnic Albanian extremism and insecurity along the administrative boundary with southern Serbia and the international border with the former Yugoslav Republic of Macedonia.

89. The Special Representative appreciates recent steps taken by KFOR towards a more transparent detention policy, principally its decision to replace the classified detention directive known as FRAGO 997 with an unclassified detention directive that is available to members of the international community. This latter document is known as COMKFOR detention directive 42, dated 9 October 2001.

90. He remains concerned, nonetheless, that KFOR "military holds" (i.e. arrests and detentions) may be incompatible with basic human rights principles and the rule of law. The relevant criteria under directive 42, specifically, the existence of a "threat to KFOR" or the "safe and secure environment" of Kosovo, are too vague and undefined to provide an adequate and transparent framework for detention. It gives overly broad discretion to KFOR to detain. Further, the provisions of directive 42 - stipulating that "the fact that a person may have information of intelligence value by itself is not a basis for detention" and that "not all criminal activity constitutes a threat" under resolution 1244 (1999) - raise questions concerning the need for KFOR detention practices in view of the fact that given that the remaining grounds for detention are adequately covered by existing legislation on terrorism, illegal border-crossing and organized crime. In addition, the Special Representative remains concerned that persons detained by KFOR do not have a guaranteed right of access to defence counsel in accordance with the directive since detainees may have access to a lawyer only at their own expense. This is of particular concern in cases where juveniles are detained.

91. The Special Representative urges KFOR to review current practices to address these concerns. If such practices are necessary to meet the exigencies of the situation then appropriate legal derogations should be adopted. In view of the fact that Kosovo's criminal law now includes regulations on terrorism, illegal border-crossing and organized crime and that the presence of international judges and prosecutors within the normal court judicial process should improve the handling of these cases, there is now a reduced need for such exceptional measures to be employed.

### 4. Human rights within UNMIK

92. The Special Representative remains concerned that human rights principles are not sufficiently integrated into the process by which legislation and administrative procedures are promulgated and implemented. There seems to be some uncertainty within UNMIK as to whether its activities as a transitional government are governed by international human rights norms. UNMIK regulation 1999/24, which establishes the applicable law in the province, is unclear on this question. The new constitutional framework for Kosovo enumerates an exhaustive list of human rights instruments that are deemed binding in Kosovo, but it inexplicably excludes the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Representative emphasizes the universal, inalienable and indivisible character of all human rights and urges the Special Representative of the Secretary-General to ensure that these rights form part of the applicable law in Kosovo. He also notes that a number of the international instruments cited within UNMIK regulations and the Kosovo constitutional framework, including the Universal Declaration of Human Rights, are incorrectly named.

93. The Special Representative repeats his earlier concerns that the post of Senior Human Rights Adviser to the Special Representative of the Secretary-General has been unfilled since February 2000, despite the fact that this post was an important element in the Secretary-General's report to the Security Council on UNMIK in July1999 (S/1999/779). He renews his recommendation for the appointment of a Senior Human Rights Adviser who would ensure a proactive approach on human rights in all UNMIK activities and would ensure the compatibility of regulations issued by UNMIK with international human rights standards.

94. The Special Representative also urges the Special Representative of the Secretary-General to reconsider existing law-making practices and to ensure that the Office of the Legal Adviser establishes appropriate mechanisms for broader-based consultations on draft regulations. This would better ensure that regulations comply with human rights standards, as well as the Kosovo constitutional framework. He also encourages greater transparency and public participation in governing structures in Kosovo - in particular, members of Kosovo civil society must be included in a broader way in the formation of policy and the drafting of regulations that pertain to human rights issues.

## E. Situation in Montenegro

### 1. General situation

95. Uncertainty about the future constitutional status of the Republic of Montenegro continues to hamper any real progress to reform the institutions of Government, including reforms that are necessary to improve the promotion and protection of human rights in Montenegro. At the same time, the degree of cooperation between Federal authorities and those within the Republic of Montenegro remains poor and, in some areas, non-existent. Intensive discussions are now taking place between various political parties to define the basis and timing of a referendum on independence which, if it takes place, does not seem likely before the spring of 2002. A major political debate continues over the form of the referendum and the percentages of votes needed to validate and approve the poll. Whilst the first draft referendum law allowed for a simple majority of those who turn out to vote to decide the referendum, a paper published by the Office for Democratic Institutions and Human Rights of the OSCE in November 2001 expressed a clear preference for a higher standard that would require a minimum turnout of half of all eligible voters.

96. As a result of these interrelated factors, any real progress in undertaking essential reform of the institutions of Government and generally improving the socio-economic situation within the Republic has been extremely slow.

97. The Special Representative recognizes that some reforms may not be capable of completion until greater certainty is reached on broader constitutional questions but is convinced, nonetheless, that there are practical areas of reform relating to human rights that can be successfully undertaken now, even within this climate of uncertainty. Broadly, reforms are required to more clearly demarcate and separate the constituent elements of Government - executive, legislative and judicial. Specific areas for attention are addressed below.

### 2. Right to life

98. The Special Representative notes with concern the continued application of capital punishment by the courts in Montenegro, although there has been a moratorium on executions since 1980. Most recently, on 11 October 2001, the High Court in Podgorica sentenced two suspects to death for killing a truck driver after stopping him using police uniforms and robbing him at a gunpoint.

99. The Constitution of the Republic of Montenegro (art. 21), declares that "human life is inviolable", but still provides for capital punishment for "the most serious criminal offences". Accordingly, the current Criminal Code of the Republic (art. 30), envisages death as the heaviest sanction for aggravated murder. Montenegro has established a working group in charge of amending the Criminal Code of the Republic with the aim of abolishing the death penalty. The Special Representative urges the working group to fulfil its tasks as soon as possible, especially in view of the declared policy of Montenegrin authorities to harmonize the Republic's legislation with the existing European standards.

### 3. Right to a trial within a reasonable time or release pending trial

100. The Special Representative reiterates his concern for the continuing delays in the prosecution of Nebojsa Ranisavljevic, who was charged with war crimes against civilians arising from the "Strpce incident", wherein a number of civilians were abducted from a train on 27 February 1993 and whose whereabouts remain unknown. Mr. Ranisavljevic has been held in pre-trial detention since October 1996 and the High Court of Bijelo Polje has been unable to conduct the trial due to difficulties in amassing evidence. In its latest session, on 6 and 7 December 2001, the Court failed to move the case forward "due to the absence of summoned witnesses". In the meantime, Mr. Ranisavljevic began his sixth year in prison without trial.

101. The Special Representative recognizes the seriousness of the charges faced by the accused, but is of the view that the present delays have led to an unacceptably prolonged period of pre-trial detention. He calls on the relevant judicial authorities to prosecute this case without further delay and in accordance with international standards of due process.

### 4. Freedom of the media and the right to freedom of expression

102. The Special Representative notes that the Law on Public Information of 1998 contains provisions that promote a free and independent press and the freedom of expression. However, the Montenegrin Criminal Law contains criminal sanctions for cases of libel and slander that seriously limit the freedom of expression in practice. In his report to the fifty-sixth session of the General Assembly, the Special Representative expressed his specific concerns about a court decision of September 2001, wherein Vladislav Asanin, editor-in-chief of the local Dan newspaper, was sentenced to five months' (suspended) imprisonment and two years' probation for reprinting allegedly defamatory articles from a foreign magazine. He is therefore concerned to note that a second criminal case - filed by the President of the Republic of Montenegro but in his personal capacity and by way of private prosecution - has been brought against the same journalist for the same allegedly defamatory publication. Mr. Asanin was tried and found guilty by the First Level Court of Podgorica and was sentenced on 6 December 2001 to three months in prison for defamation (article 76, paragraph 3, of the Criminal Law of the Republic of Montenegro).

103. Without commenting on the specific facts of this case, which remain sub judice, the Special Representative notes that national laws limiting the right to freedom of expression - as contained in article 19 of the International Covenant on Civil and Political Rights - may

impose restrictions necessary "for the respect of the rights and reputation of others", but that these must be limited, necessary in a democratic society and proportionate to the legitimate aim pursued. The Special Representative believes that in the absence of particularly aggravating circumstances, such cases ought properly be dealt with by the civil law - with an appropriate award of damages - rather than through a criminal law process.

104. He recommends that early steps be taken to abolish all legal provisions that impose custodial penalties for slander and defamation, in favour of less draconian sanctions. He also recommends the abolition of the special criminal law protection given to public figures and symbols listed in article 82 of the criminal law of the Republic of Montenegro. He further suggests that in drafting the law on electronic media, the authorities take into account relevant international standards on the freedom of expression.

### 5. Protection of minorities

105. The Special Representative notes that the current legislation in Montenegro is generally in accordance with international standards relating to rights of persons belonging to ethnic and religious minorities. He also notes, however, that minorities in Montenegro continue to be underrepresented in the civil service, particularly at its middle and lower levels. In this respect, the Special Representative appeals to the authorities to speed up the implementation of plans related to the appointment of ethnic minority representatives as chiefs of police and other responsible posts in municipalities and communities where those minorities live.

106. He notes with concern several instances where the media in Montenegro had incited animosity against minority groups. For instance, the armed robbery and the killing of woodcutters in the north of Montenegro earlier in 2001 prompted a number of anti-Albanian articles. The murders were cited falsely as evidence that "Albanian terrorists" crossing the border from Kosovo and Albania were plotting a rebellion against Montenegro. The Special Representative calls on journalists to observe their professional duty to report truthfully and to avoid any use of discriminatory terms and prejudicial or derogatory stereotypes.

### 6. Trafficking in human beings

107. Trafficking in human beings, including trafficking in women and illegal immigrants, continues to be a human rights problem in Montenegro. The Government, especially the Ministry of the Interior, does take some measures but they are still not enough to deal effectively with this problem. The adoption in early 2001 of a National Plan of Action against Trafficking, the appointment of a national governmental coordinator in charge of trafficking issues and the creation of an inter-agency task force within the Government to combat trafficking are positive developments. Those new structures and mechanisms should be encouraged and assisted in their further activities.

Notes

[1] "[W]e do not believe the system of internal control as it is currently administered is adequate to protect the public assets of Bosnia and Herzegovina ... ." Office of the High Representative Anti-Fraud Department Bosnia and Herzegovina, Special Audit Report Summary, June 2001, located at http://www.ohr.int/ohr-dept/afd/audits/default.asp?content_id=5538#1 Further, the Audit Office of the Institutions of Bosnia and Herzegovina found, inter alia, that the Ministry of Foreign Trade and Economic Relations failed "to establish [an] efficient internal system of control over budget revenues and expenditures" and that the financial statements of the Ministry of Foreign Affairs "do not present a fair and true view of operations during the year". Reports are located at http://www.revizija.gov.ba

[2] The implementation ratio equals the total number of repossessions/total number of claims, expressed as a percentage.

[3] Source: Statistics on the Implementation of the Property Laws in Bosnia and Herzegovina, published jointly by the United Nations High Commissioner for Refugees, the Office of the High Representative, the Organization for Security and Cooperation in Europe, the United Nations Mission in Bosnia and Herzogovina, and the Commission for Real Property Claims of Displaced Persons and Refugees, 31 October 2001.

[4] Agreement on the Manner and Procedure of using Health Care Service of Insurees in the Territory of Bosnia and Herzogovina outside the Territory of the Entity, including Brcko District, in which they are Insured, 5 December 2001.

[5] For more specific details about these allegations of police ill-treatment see Web site of the Humanitarian Law Centre, www.hlc.org.yu

[6] Ibid.

[7] The UNMIK Bureau for Detainees and Missing Persons estimates that there are approximately 3,500 ethnic Albanian and 1,500 ethnic Serb and other minority missing persons.

[8] The estimates vary between 464 and 571 because of different methods of analysing the remains.

[9] Approximately 385,000 refugees are from new States of the former Yugoslavia residing in Serbia and 15,000 in Montenegro. Most IDPs are ethnic Serbs and other ethnic minorities displaced from Kosovo during and since the conflict in 1999.

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